UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/1994/SR.24
19 January 1996

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Fiftieth session

SUMMARY RECORD OF THE 24th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 15 February 1994, at 3 p.m.

Chairman: Mr. van WULFFTEN PALTHE (Netherlands)

CONTENTS

Statement by Mrs. Rigoberta Menchú, Nobel Peace Prize 1992, United Nations Goodwill Ambassador for the International Year of the World's Indigenous People

Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the work of its forty-fifth session (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.94-11039 (E)

The meeting was called to order at 3.10 p.m.

STATEMENT BY MRS. RIGOBERTA MENCHU, NOBEL PEACE PRIZE 1992, UNITED NATIONS GOODWILL AMBASSADOR FOR THE INTERNATIONAL YEAR OF THE WORLD'S INDIGENOUS PEOPLE

1. Mrs. MENCHU said that, since the establishment of the Working Group on Indigenous Populations in 1982, significant progress had been made towards the recognition of the rights of indigenous peoples, including the drafting of a declaration on the subject, the adoption by the International Labour Organization (ILO) of Convention No. 169 and, most importantly, the declaration of 1993 as the International Year of the World's Indigenous People. Although the International Year had unfortunately not been given the necessary priority by States and the United Nations itself, it had increased awareness of indigenous peoples and their situation and had shown that they were capable of deciding their own fate. Her own appointment by the Secretary-General of the United Nations as Goodwill Ambassador for the International Year had demonstrated the Organization's willingness to devote more attention to the problems of indigenous peoples.

2. The International Year had also facilitated the organization of various conferences and meetings, such as the Asian Conference and the two Summit meetings of indigenous peoples, which had helped the public learn about the indigenous issue and understand it better. The first Summit meeting, held in Guatemala in 1993, had taken place under difficult circumstances, coinciding with an attempted coup against the then President, Mr. Elías. That attempt had failed, thanks to a formidable mobilization of citizens who had thus demonstrated their shared desire for peace and democracy, as well as the considerable power of civil society against military authoritarianism. Members of Mayan organizations had also contributed significantly to the efforts to build a new Guatemala based on recognition of and respect for ethnic plurality and cultural diversity, democracy, justice and peace. The fact that Mr. Ramiro de Léon Carpio, the former procurator-general for human rights, had come to power had generated the hope that the rights of Mayas would finally be acknowledged and respected, corruption and impunity eliminated and a firm and lasting peace established. Unfortunately, those hopes had for the most part been unfulfilled and violations of human rights, particularly those of indigenous peoples, had steadily increased, for reasons that included the continued presence of civil defence patrols armed and led by the Guatemalan army. The resumption of negotiations under United Nations auspices between the Government and the Guatemalan National Revolutionary Union was nevertheless an encouraging sign and it was to be hoped that the two parties would sign an agreement on human rights at their next meeting. The implementation of such an agreement was the only way to ensure peace in Guatemala with the involvement of civil society and indigenous peoples. In conformity with its mandate, the Commission on Human Rights should monitor the situation in Guatemala closely and assist the country in its efforts to protect and promote human rights.

3. At the second Summit Meeting of Indigenous Peoples, held in Mexico in October 1993, it had become clear that the situation of indigenous peoples had worsened during the International Year because of the contempt, bordering on racism, with which they were treated in many countries. There were no

coherent governmental policies to embody the principle that indigenous peoples were capable of self-reliance. Their rights were continually trampled underfoot, particularly the right to own land, and their lives were characterized by extreme poverty and privation, which led to many conflicts. Nevertheless, the International Year had also revealed that indigenous peoples lived in harmony with nature and that many people today were in search of the existential values that had disappeared from modern materialistic society, but had remained intact in indigenous societies. The time had come to rediscover those community values and to teach societies to live together in respect for ethnic plurality and cultural diversity.

4. The declaration of the International Decade of the World's Indigenous Peoples, proposed at the Vienna Conference and supported by the two Summit meetings of indigenous peoples, was a first step towards eliminating the injustices to which those peoples were subjected. The main objective of the Decade was to strengthen international cooperation in solving the problems they encountered, particularly in the areas of human rights, the environment, development, education and health. Throughout the Decade, indigenous peoples would work to strengthen the international legal framework for their struggle by promoting the adoption of legislative measures in their favour in all the countries where they lived. They consequently welcomed the fact that the Sub-Commission on Prevention of Discrimination and Protection of Minorities had concluded the first stage of its work in elaborating a draft declaration on the rights of indigenous people. During the Decade, States where indigenous peoples lived should revise their constitutions to recognize the existence of such peoples, thereby enshrining their inalienable rights and ensuring respect for their political, legal, economic, social and cultural institutions. To claim such rights or to demand that they be set out in a legal instrument in no way threatened a State's national unity or its continued existence. It was from that standpoint that the issue of self-determination of indigenous peoples must be viewed. The indigenous peoples reaffirmed their support for the Working Group on Indigenous Populations and hoped that their representatives would be permitted to participate fully in its deliberations. It was also important that an effective programme of action should be elaborated for the Decade, laying the foundations for communication between indigenous peoples, States, international institutions and society as a whole, and that the objectives, purposes and strategies of the Decade should be fully publicized at all levels.

5. Referring to the violent events that had recently occurred in the Mexican State of Chiapas, she noted that the revolt had highlighted the degree of marginalization and extreme backwardness in which the indigenous peoples of the American continent lived. In the wake of those events and as a recipient of the Nobel Peace Prize, she had joined with 10 other well-known leaders of indigenous groups to launch an indigenous people's initiative for peace in Chiapas that had taken them to the conflict areas. They had been able to meet with representatives of all sectors of civil society as well as with Government officials and religious leaders and had heard numerous reports of violations of the human rights of indigenous peoples in the region, including the Mayas. As an outcome of that initiative for peace in Chiapas, a detailed report containing many recommendations had been submitted to President Salinas. The constructive efforts of the Mexican Government to find

a negotiated political solution to the armed conflict and to establish a dialogue with the indigenous groups and poor peasants of Mexico, and particularly of Chiapas, had been welcomed with great satisfaction. Since the initiative had been an extremely valuable experience, it had been decided to convert it into a permanent body. To defend and promote the rights of indigenous peoples throughout the world, the follow-up group established after the second summit conference on indigenous peoples had become the indigenous peoples' initiative for peace on 29 January 1994.

6. As part of the International Decade for the World's Indigenous People, the new institution would be actively involved in the struggle to ensure respect for the rights of indigenous peoples and to find peaceful solutions to the problems they were facing throughout the world today. One of its main tasks, to be carried out in close cooperation with the United Nations, would be to promote the participation of indigenous peoples in the activities outlined in the Programme of Action for the Decade. Over the centuries, indigenous peoples had learned that nothing could be gained without struggle and sacrifice. The fact that the silence had now been broken clearly showed that their struggle had not been in vain.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON THE WORK OF ITS FORTY-FIFTH SESSION (agenda item 17) (continued) (E/CN.4/1994/2-E/CN.4/Sub.2/1993/45; E/CN.4/1994/70, 71 and Add.1; E/CN.4/Sub.2/1993/35; E/CN.4/1993/58 and Add.1)

7. Mr. ELKARIB (Sudan) said that he had not been able to respond to the allegations levelled against his country at the preceding meeting by the representative of the non-governmental organization World University Assistance and he therefore requested the Secretariat to distribute to participants the text of the statement he would have made in exercise of the right of reply.

8. Mr. HELMS (Observer for Denmark), speaking on behalf of the five Nordic countries, said that they had long seen it as a duty of the international community to devote more attention to the problems of indigenous peoples and therefore welcomed the recommendations on the subject made by the World Conference on Human Rights. They had noted with satisfaction that the United Nations system had been able to raise international awareness of the existence of indigenous peoples and of their struggle to gain respect for their cultures and traditions, primarily through the Working Group on Indigenous Populations and, in particular, the declaration of the International Year of the World's Indigenous People. The Nordic countries were fully committed to the ongoing work to draft a universal declaration on indigenous rights.

9. New steps had been taken towards improving the situation of indigenous peoples when the General Assembly, following up on a recommendation by the World Conference on Human Rights, had adopted resolution 48/163 in which it had called on the United Nations to consider the establishment of a permanent forum for indigenous people. That was clearly a sign that the States Members of the United Nations were aware of the need to bring indigenous values and rights into focus. While the Decade was designed to raise awareness about indigenous issues, the establishment of a permanent forum should make it

possible to promote the legitimate interests of indigenous peoples. What they needed first and foremost was to be able to enjoy their basic rights, but there were other interests that needed to be protected as well. The Nordic countries therefore hoped that the Commission would adopt a resolution on the establishment of a permanent forum in the United Nations system and that it would give priority to that issue at its fifty-first session. They knew from experience that the more indigenous peoples were recognized and respected within the nation State where they lived, the more harmonious the State became. The focus should therefore be on the interests not only of indigenous peoples, but also of the States where they lived.

10. Dato MUSA HITAM (Malaysia) said that the International Year of the World's Indigenous People proclaimed by the General Assembly at its most recent session, as well as the International Decade of the World's Indigenous People that had preceded it, had been intended to strengthen international cooperation for the solution of problems faced by indigenous peoples in the areas of human rights, the environment, development, education and health. For centuries, indigenous peoples had been neglected, exploited and marginalized through Government policies and legislative measures institutionalized by dominant societies. Today's debate about the place of indigenous peoples in global society had inevitably focused on development. Indigenous peoples should freely exercise their right to development, including through access to health facilities, schools and other infrastructure.

11. In Malaysia, indigenous peoples lived at peace with other immigrant races. There were few cultural conflicts between indigenous minorities and the indigenous majority. The dominant group had been able to empathize with indigenous minorities and to encourage them to participate in mainstream society, whereas elsewhere, indigenous minorities had to struggle not only to gain acceptance, but, more critically, for survival and the existence of their way of life. In Malaysia, the rights of indigenous peoples were protected by the Constitution. Many indigenous groups still practised their traditional modes of life in their natural environment, generally at the fringe of or in the middle of the jungle. In most cases, however, members of those groups had integrated with the mainstream by choice, for the Government had scrupulously shunned anything that smacked of assimilationist policy. A comprehensive plan had been developed to improve the general welfare of indigenous peoples in a number of areas and thereby to ensure their right to development. The developmental process took into account the values of indigenous peoples themselves, however, for the Malaysian Government was fully aware of their desire for sustainable development that was not environmentally destructive. It had carefully avoided institutionalizing a welfare mentality involving a system of handouts. Much remained to be done, however, to elevate the lot of indigenous peoples. The Malaysian situation was unique in that the indigenous majority was politically dominant and economically vibrant. He himself was a member of an indigenous group that had chosen to leave its natural setting and to integrate with the global village, while remaining proud of its ancestry. The remaining indigenous minorities could act similarly of their own volition. It was just such a people-centred developmental process that had made Malaysia a relatively prosperous country.

12. The current debate on indigenous peoples seemed to stress solely their ethnic and cultural distinctiveness. Yet such an approach inevitably consigned them to a state of dependency on a condescending majority community and relegated them to the status of objects for tourists to gawk at. In Malaysia, visits to indigenous settlements were not allowed in order to prevent them from becoming tourist attractions. The Malaysian authorities believed that a preservation-in-reservation policy virtually confined indigenous populations to ghettos or out-of-the-way areas and impeded the modernization of their living conditions.

13. The World Conference on Human Rights had recommended the establishment of a permanent forum for indigenous people in the United Nations system. It was to be hoped that that did not become simply an alibi or an exercise in tokenism. Malaysia would do its part to follow up on the recommendations of the World Conference. In November 1993, it had hosted an international seminar on the future of indigenous peoples in the overall context of national development.

14. Mrs. STEIN BRIDEL (International Association of Democratic Lawyers) said that her association had already submitted a number of reports and statements on the painful issue of physical abuse of children, either for immoral purposes (prostitution, pornography) or for the removal of body organs. Those practices constituted a form of slavery in which the human body was considered a commercial object. Before the Commission's session had begun, her association had shown a film made by Jürgen Roth entitled "Organ Thieves". Many had been unable to watch the film and had deemed the fate of children subjected to such cruel practices to be entirely unacceptable. Such practices, comparable to forms of slavery, were contrary to the Convention on the Rights of the Child and the recommendations of the Working Group on Enforced or Involuntary Disappearances.

15. The International Association of Democratic Lawyers consequently called on the Commission to appoint a Special Rapporteur on body organ trafficking who would be responsible for investigating criminal groups and their networks so that the guilty parties could be brought to court and such terrible abuses brought to an end.

16. Mr. JU Hyong Sun (International Association of Democratic Lawyers), referring to the issue of women subjected to sexual slavery or forced labour by Japanese soldiers during the Second World War, said that a great many surviving victims were calling for compensation and justice on behalf of the hundreds of thousands of women who had lost their lives after having been physically and spiritually wounded. The Japanese Government claimed to be unable to settle the issue on the grounds that it had no way of knowing whether the so-called "comfort women" were telling the truth. The Japanese leaders were thus trying to obscure the crimes of their predecessors by dragging things out until death had taken the last of the victims.

17. After the Second World War, the Nürnberg Tribunal had convicted the Nazi criminals and granted compensation to the victims. Was the sexual slavery inflicted upon Asian women less onerous than the other misfortunes that had befallen women in other countries? The crime committed by Japan against Korean and other Asian women was a crime against humanity and, as such, was

not time-barred. Japan could not be exonerated from its obligations under international treaties, including the Slavery Convention and the Forced Labour Convention; if only on moral grounds, its crime must not go unpunished. His Association called for Japan to open an inquiry into sexual slavery in order to establish the facts and the exact number of victims and demanded that Japan should provide compensation to the victims and their families and that those responsible should be brought to trial.

18. Mr. BAER (Nordic Saami Council), speaking on behalf of the Saami Council, which represented the Saami nation of Finland, Sweden, Russia and Norway, welcomed the positive developments during the International Year of the World's Indigenous People. The General Assembly's decision to establish an International Decade for the World's Indigenous People and the proposal by the World Conference on Human Rights in Vienna, endorsed by the General Assembly, to establish a permanent forum for indigenous people, indicated that the international community now understood the reality of indigenous peoples. The forum should be established at the highest possible level of the United Nations system. The Nordic Saami Council hoped that the Commission would adopt the related resolution submitted by the Danish delegation. He welcomed the fact that the five Nordic countries were actively monitoring the formulation of international standards on indigenous rights.

19. The current level of self-government among the Saami people in the Nordic countries was rather limited, and that explained why they had not been admitted to membership in the Nordic Council. That argument was no longer valid, however, for, in August 1993, Sweden had established a Saami Parliament, called the "Sameting", following the example of Finland in 1973 and Norway in 1989. The question of Saami membership in the Nordic Council was on the agenda for the Council's next session, to be held in Stockholm from 7 to 11 March 1994.

20. No member of the Nordic Council had met the aspirations of the Saami Council regarding ownership and administration of Saami lands. The Saami people was currently in conflict with the Swedish Government following the adoption by the Swedish Parliament of a bill authorizing hunting on a traditional Saami preserve. If no agreement was reached, the issue would probably be brought up in the Swedish courts or in an international tribunal. Independent experts such as Professor Bertil Bengtsson, former Justice of the Supreme Court of Sweden, had criticized the bill. He had asked how it could be explained that, in the eighteenth century, the Saamis had had ownership rights over their lands, but that they were deprived of those rights today and were not even permitted to control the use of those lands. The Saami people in Russia were facing a totally new situation. His organization was closely following the question of indigenous land rights, particularly the rights of Saamis in Russia and the enforcement of the Russian Constitution.

21. Mr. SRIVASTAVA (Indian Institute for Non-Aligned Studies) said that, having observed the proliferation of conflicts arising from social intolerance, his organization had done research which had shown that, irrespective of political affiliation or level of development, certain destructive centrifugal tendencies were coming to the fore in today's competing societies and that they increased the conflicts between groups and ethnic minorities, especially if buttressed by governmental policies. Many

social scientists today were cautioning against indiscriminate support of the divisions in society which exacerbated conflict rather than reducing it. The end of the Cold War and the collapse of communism had not held out hope for long. Whether in Europe, Africa, Asia or the Americas, conflicts arising from ethnic or religious intolerance had become rampant.

22. One of the most unjust social systems in the world was the abhorrent system of caste in India. It was fortunate that, after independence, a number of Governments had followed enlightened policies based on tolerance, with the result that social and religious minorities were no longer harassed. Despite such policies, however, a resurgence of religious-based intolerance was now occurring. The Indian Institute for Non-Aligned Studies was particularly concerned about the persecution of non-Muslim minorities in Pakistan, for the virus of intolerance spread rapidly.

23. In 1984, the Supreme Court of Pakistan had opened the door to official encouragement of the persecution of the Ahmadia sect on the grounds that its members were not Muslims. The Christian community had also been harassed and exposed to violence. The Sindhi community had long been affected by persecution. The World Sindhi Conference, the main representative body of more than 40 million Sindhis throughout the world, claimed that the Sindhi civilization (also called the Indus), which was considered to be about 10,000 years old, was now under threat of extinction from terrorism, drug trafficking, arms smuggling and persecution.

24. He drew the Commission's attention to the fatwa against a woman novelist in Bangladesh who had been condemned to death for having written a book ("Tasleem") on a minority community and who had been living in hiding for several months. That kind of persecution for freedom of thought was a dangerous precedent in the region.

25. The men and women of the Indian subcontinent who had helped to foster peace between the various religious and ethnic groups included Mother Teresa in India and Mr. Man Singh in Nepal, who had received the 1993 United Nations Human Rights Prize.

26. Mr. MOSES (Grand Council of the Crees) welcomed the proclamation of the International Decade for the World's Indigenous People and asked what it could be expected to accomplish. The first order of business would be the completion of work on and the adoption of a declaration on the rights of indigenous peoples. The draft declaration would be submitted for approval to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-sixth session. The Grand Council of the Crees commended the Working Group and, in particular, its Chairperson-Rapporteur, Mrs. Daes, for the exemplary work done in more than eight years. The meetings of the Working Group on Indigenous Populations had been attended by several States, non-governmental organizations, indigenous peoples' organizations and experts. Some members of the Working Group had visited indigenous peoples. The draft as a whole was well conceived and, as a United Nations declaration, it would establish much-needed international standards for the protection of the rights of indigenous peoples. It was not a perfect document by any means and did not fully reflect the aspirations of indigenous peoples, for it

reflected compromises made with States. Nevertheless, it was a reasonable declaration of minimum standards and could be approved by the Commission without significant amendment.

27. He noted with satisfaction that, in keeping with Sub-Commission practice, the draft declaration referred to "peoples". The adoption of the draft declaration by the Commission at its fifty-first session would be a good start for the International Decade of the World's Indigenous People. He hoped that the other work entrusted to the Working Group would be continued. The study being carried out by Mr. Alfonso Martínez on treaties, agreements and other constructive arrangements between States and indigenous peoples was particularly important. The study by Mrs. Daes on the cultural and intellectual property of indigenous peoples was also extremely significant. He also expressed satisfaction that, 500 years after the start of the holocaust of indigenous peoples, their rights were about to be recognized by the international community. The International Decade for the World's Indigenous People should help to teach the world about indigenous peoples.

28. Mr. WONG (International Association for the Defence of Religious Liberty) welcomed Sub-Commission resolution 1993/2 on the elimination of all forms of intolerance and of discrimination based on religion or belief. That resolution had been prompted by the Sub-Commission's concern about the renewed outbreak of serious incidents of intolerance, especially against women and intellectuals, caused by religious extremism. He gave a number of recent examples of such extremism. In Egypt, Hanaan Assofti, a convert from Islam to Christianity, had been arrested by State security police in 1992 while attempting to leave the country to join her fiancé. She was now being forced to attend courses at the Islamic Institute and had been beaten and threatened with death. Kamil Badr, a Coptic Christian, had been arrested in July 1993 for printing the testimony of a Muslim. Mr. Badr had not been charged and was in danger of being kept in prison indefinitely. In Iran, it was an offence to sell the Bible and churches were being forcibly closed. The superintendent of the Assemblies of God churches, Bishop Haik Hovsepian-Mehr, had requested the Commission on Human Rights to send a mission to that country, but had been assassinated in January.

29. In Pakistan, Gul Masih, a Christian sentenced to death in November 1992 for defiling the name of the Prophet, had appealed the sentence, but remained imprisoned. Salamat Masih, who was only 12 years old, was under threat of the death penalty for blasphemy, as were Rehmat Masih and Manzoor Masih. According to Amnesty International, the blasphemy laws had been widely abused in their application to personal enemies of the complainants and represented a powerful weapon against religious minorities. In Saudi Arabia, 329 people had been arrested since 1990 for taking part in Christian acts of worship. Conversion to a faith other than Islam meant that one risked the death penalty. In Sudan, the civil war fuelled by Khartoum's efforts to convert the south to Islam had led to an estimated 1.5 million deaths and about 4 million people displaced. It was not only Christians, but also moderate Muslims that were victims of fundamentalism there. The Sudanese Church, which had called for peace talks under the auspices of the United Nations, felt that it had been forgotten by the world. His organization hoped for positive action from the Sub-Commission to protect religious freedom and backed the recommendation to be submitted by the Sub-Commission to the Commission on Human Rights that

it should consider organizing a global consultation on the positions and approaches of various religions and beliefs to human rights and fundamental freedoms.

30. Mr. MARANTZ (Canada) said that his Government was committed to building a new partnership with its aboriginal people and had initiated a series of discussions with aboriginal groups, provincial and territorial Governments and interested third parties to hear their views on how to implement the right of self-government which was written into the Canadian Constitution. That emphasis on practical results would also inspire Canada's approach to indigenous issues within the United Nations. With the proclamation of the International Year, indigenous peoples had seen opportunities open up for them to participate in the work of the United Nations. Indigenous concerns had figured prominently in the discussion at the World Conference on Human Rights. The Sub-Commission on Prevention of Discrimination and Protection of Minorities had submitted a draft declaration on the rights of indigenous people. And, in resolution 48/163, the General Assembly had proclaimed the decade beginning on 10 December 1994 as the International Decade for the World's Indigenous People.

31. Canada believed it was essential to develop a clear and practical strategy for realizing the objectives of the Decade, which must be measurable, and to draw up a funding plan. The meeting to evaluate the International Year for the World's Indigenous People should also provide an opportunity for indigenous groups to develop plans for the Decade. He welcomed the increase, however modest, in the resources allocated by the General Assembly to the Centre for Human Rights for activities relating to the rights of indigenous peoples. He likewise applauded the decision of the Assistant Secretary-General for Human Rights to give greater attention to such matters. With regard to the contribution made by the Sub-Commission in another important area, the rights of disabled persons, he noted that the World Conference on Human Rights had adopted important pronouncements on that question and that the General Assembly had adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. Canada would be introducing a draft resolution on that subject and invited governmental and non-governmental representatives to make suggestions on it.

32. Mrs. GOSPODARCZYK (Poland) paid tribute to the Sub-Commission for the large number of studies, reports and resolutions that resulted from its work. She expressed appreciation in particular to the Special Rapporteur on discrimination against HIV-infected people or people with AIDS, Mr. Varela Quirós, and to the rapporteur on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities, Mr. Eide. The question arose, however, whether the Sub-Commission's own efficiency had led it to extend the scope of its responsibilities unduly and whether it would not be better to reduce its tasks, despite the numerous demands made on it, in favour of an in-depth debate on the issues before it.

33. Several Governments were pushing for measures to strengthen the autonomy of experts and had emphasized the need to adapt the Sub-Commission to current and future needs. The implementation of the Vienna Declaration and Programme of Action would require an overall examination of United Nations human rights

activities with a view to improved coordination and streamlining. Any reform of the Sub-Commission would thus be carried out in concert with broader reforms of the Commission on Human Rights and other United Nations bodies. In the first instance, the relationship between the Commission and the Sub-Commission should be reconsidered constructively. It was encouraging that the Commission on Human Rights, in its resolution 1993/28, had noted an intensified dialogue and a spirit of cooperation between the two bodies.

34. Her delegation was ready to contribute to better coordination of the activities of the Sub-Commission and the Commission; the rationalization of time allocated for the Sub-Commission's various activities and the adaptation of its agenda to the evolving situation; the improved flow of information on its activities; and the reinforcement of the independence of its experts.

35. Mr. WILLIS (Australia) said that the rights of indigenous peoples was a subject that was commanding increasing attention throughout the world, reflected in the designation of 1993 as the International Year of the World's Indigenous People. In addition, the World Conference on Human Rights had recognized the unique contribution of indigenous peoples to the development and plurality of society and had recommended the completion of the draft declaration on the rights of indigenous peoples, the renewal of the mandate of the Working Group on Indigenous Populations, the extension of advisory services and technical assistance to indigenous peoples, the proclamation of an International Decade of the World's Indigenous People and the consideration of the establishment of a permanent forum in the United Nations system for indigenous peoples.

36. Now that the drafting of the United Nations declaration on the rights of indigenous peoples had been completed, his country urged the Sub-Commission to finalize its consideration of the draft at its next session so that it could be referred to the fifty-first session of the Commission on Human Rights. The Commission should establish its own working group to advance the process and that group should organize its activities in such a way as to take account of the views of non-governmental organizations and representatives of indigenous peoples. The Commission's Working Group on Indigenous Populations still had a role to play, but its mandate must be revised. It could be given the role of a permanent forum, if such a forum was to be established. Australia would strongly support a resolution by the Commission to that effect.

37. Australia also believed that the months remaining for preparation of the International Decade of the World's Indigenous People should be used to take advantage of the lessons of the International Year. Lasting results could not be achieved without careful planning, coordination and implementation, in close cooperation with indigenous peoples. The Assistant Secretary-General for Human Rights, as coordinator of the Decade, and the Centre for Human Rights would have a crucial role to play. It was vital that they should be given the necessary human, financial and material resources to fulfil their tasks. Australia urged Governments in a position to do so to assign staff, including representatives of indigenous peoples, to the Centre in order to assist with the organization of the Decade. Australia would submit to the Commission a draft resolution on the Decade and looked forward to constructive discussions with representatives of other countries and a wide range of organizations.

38. Mr. GWAM (Nigeria) commended the Sub-Commission on its diligent approach to its work. Nigeria attached great importance to the preliminary report on monitoring the transition to democracy in South Africa submitted by Mrs. Attah. The report emphasized the need for the international community to assist the majority of South Africans in exercising the right to vote that had long been denied them. The international community should provide an adequate number of observers and help the democratic Government that would emerge from the elections provide the majority of the population with the housing, education, health care and employment that had long been denied them.

39. Efforts should be redoubled to combat demagoguery, racism and racial discrimination. That was why Nigeria unreservedly endorsed Sub-Commission resolution 1993/3, which, among other things, recommended that the Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance should examine "situations in various regions of the world, beginning with incidents which are increasing in the developed countries, as well as theories and attitudes of racial superiority which incite them".

40. Turning to the issue of extreme poverty, an acute problem in the developing countries, he said the Commission should support the proposal made by the Special Rapporteur on the study of the question of human rights and extreme poverty in his preliminary report (E/CN.4/Sub.2/1993/16) to hold a seminar on extreme poverty and the denial of human rights. Poverty nourished slavery and the Commission had to curb contemporary forms of that evil traffic. He urged the Commission to give the Sub-Commission its full support.

41. Mr. OYARCE (Chile) said that his comments would relate mainly to the issue of indigenous peoples. It was high time for them to be given compensation for their marginalization and the humiliations they had suffered and for their cultural distinctiveness and their right to participate in social and political life to be fully recognized on the basis of respect for their philosophical and spiritual values. With the International Year of the World's Indigenous People and the Vienna Conference, a new era had begun for them. The three technical conferences held during the International Year showed that Governments now had the necessary political will to build multiethnic and multicultural societies in which all human rights were upheld, but that the United Nations, Governments and even indigenous organizations had done nothing to translate such ideas into action. There were resource problems, as well as difficulties with the management of the Voluntary Fund for the International Year. Financial support must therefore be increased and organized more rationally. The establishment of a special fund to be administered in the light of the experience gained during the International Year should be envisaged.

42. The appeal to States by the World Conference on Human Rights that they should take steps, in conformity with international law, to ensure respect for all the human rights and fundamental freedoms of indigenous peoples was an invitation to draft an instrument that would help States regulate their policies on indigenous issues. The draft declaration prepared by the Sub-Commission's Working Group was a response to that appeal. Four aspects of the draft were of particular interest: the universality of human rights; the right to self-determination, which would provide for self-management without

dismantling internationally recognized States and, if draft articles 3 and 29 alone were taken into account, would avert unnecessary conflicts; the participation of indigenous peoples on equal terms in issues of concern to them, particularly on the system of land ownership, environmental matters and respect for cultures, customs and legal systems; and recognition of the contribution made by indigenous peoples to the cultural diversity and development of each nation State.

43. In drafting provisions on the rights of indigenous peoples, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities should be taken into account because it established a legal framework for national policies designed to build multiethnic societies. The study by Mrs. Attah on the protection of the cultural and intellectual property of indigenous peoples (E/CN.4/Sub.2/1993/28) and the study by Mr. Alfonso Martínez on treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1992/32) would make the rights of those people better known.

44. The International Decade for the World's Indigenous People, of which Chile had been one of the sponsors, represented a challenge both for Governments and the United Nations system, as well as for indigenous peoples themselves. At the technical conference scheduled before the 1st meeting of the Working Group, consideration should be given to the Decade's goals in order to devise an effective strategy for promoting all the rights of the peoples concerned. That presupposed, first of all, that the draft United Nations declaration on the rights of indigenous peoples should be adopted so that those rights became part of the United Nations human rights standards and, secondly, that a permanent forum for indigenous people should be established, as suggested in paragraph 32 of the Vienna Programme of Action. In that connection, the experience of the Sub-Commission's Working Group should be taken into account. At the Working Group's next meeting, indigenous communities, peoples and organizations as well as experts and Governments should be encouraged to express themselves, so that, at its fifty-first session, the Commission would be in a position to consider real options for establishing a fruitful dialogue between States and indigenous communities. Thirdly, in terms of specific measures, a special fund must be established, as envisaged by the World Conference on Human Rights, and the Centre for Human Rights should be supplemented by a unit responsible for indigenous issues. It was also necessary to ensure coordination among the various bodies, specialized agencies and regional commissions in the United Nations system in order to achieve the objectives outlined in General Assembly resolution 48/163, particularly in the areas of the environment, development, education, employment and health. Lastly, it was necessary to ensure direct participation of indigenous organizations in the drafting of regulations and the design of programmes of concern to them, even if such organizations did not have consultative status with the Economic and Social Council.

45. Mr. VERGNE SABOIA (Brazil) said that, at its forty-sixth session, the Sub-Commission would have to consider a crucial issue - the draft declaration on indigenous rights. The Sub-Commission's work in that area would be followed with keen interest by all segments of Brazilian society, for which

the issue was a very sensitive one. Brazil had on several occasions expressed the hope that the Working Group would elaborate a concise, balanced and realistic text which could be adopted by the Sub-Commission, the Commission, the Economic and Social Council and the General Assembly. To be universally acceptable, the draft declaration should take account of the wide diversity of situations in which indigenous communities lived and their different degrees of economic and social development.

46. The Brazilian Constitution included a chapter on indigenous rights which set out many of the concepts outlined in the draft declaration. It recognized the right of indigenous peoples to their own social organization, language, creeds and traditions and the right to ownership of the lands they traditionally occupied. The Brazilian Constitution also guaranteed the right of indigenous peoples to be consulted on any exploitation of their lands and prohibited their forceful removal, except in the event of disaster or epidemic or for reasons of national security and subject to special authorization from Congress. Congress was currently reviewing a Federal law related to the statute on indigenous peoples in order to ensure that they were involved when decisions were taken on matters of interest to them.

47. In keeping with the best United Nations tradition in human rights standard setting, the draft declaration on indigenous rights must be adopted by consensus and, to that end, it would be best to have a concise and precise draft. That would avoid the risk of it being substantially reformulated during long negotiations in the Commission. It was also to be hoped that the declaration, when adopted in its final version by the General Assembly, would reflect a balance between the aspirations of indigenous peoples and the concerns of Governments. Some provisions as they now stood would not be accepted easily by many Governments, including his own. One of them, by virtue of which indigenous populations would be given the right to self-determination as defined by international law, tended to incorporate new concepts which were not, as they stood, consistent with the practices of international law. The idea that "indigenous peoples" were granted a number of rights appeared throughout the text. References to the concept of "peoples" and to the right to self-determination, as defined in article 1 of the two International Covenants, might lead to ambiguous interpretations incompatible with international law, the principles and purposes of the Charter of the United Nations and the basic principles of State sovereignty and territorial integrity. Those provisions might be interpreted as recognizing indigenous communities as subjects of international law and as exempting them from the jurisdiction of the State where they lived.

48. His delegation believed the words "land, territories and resources" should be replaced by the words "lands and natural resources" better to reflect the diversity of situations in which indigenous people lived. The demilitarization of indigenous lands, the prohibition of the removal of indigenous groups from their lands and the access of indigenous peoples to special procedures for the resolution of conflicts and disputes with States were complex issues that required further reflection. The articles that tended to ensure access for indigenous peoples to international cooperation for environmental protection and to improve the productive capacity of their lands did not adequately reflect the role that must be played by governmental agencies.

49. His delegation strongly supported the recommendations adopted by the Vienna Conference on the work of the Working Group on Indigenous Populations. Brazil believed that the Working Group could be maintained at its present level as a subsidiary organ of the Sub-Commission. In considering the renewal of the Working Group's mandate, attention should also be given to the implementation of paragraph 26.5 of Agenda 21.

50. The overall situation of indigenous peoples in Brazil demonstrated that the Federal Government and Brazilian society were committed to promotion of their welfare and to the protection of their basic human rights and fundamental freedoms. There were 250,000 members of indigenous groups living in more than one tenth of Brazil's land area and 272 indigenous areas had been physically demarcated. Despite economic difficulties affecting all segments of society, the Federal Government was doing its utmost to implement special policies aimed at ensuring the rights of indigenous peoples as well as their participation in decision-making in matters of concern to them. The Brazilian Government therefore welcomed the General Assembly's decision, in its resolution 48/163, to proclaim the International Decade for the World's Indigenous People.

51. Mr. PETROV (Bulgaria), referring to agenda item 17, said the independence of the judiciary and protection of lawyers were of particular relevance in his country in view of the democratic changes now taking place there. One of the main goals of the ongoing legislative reforms in Bulgaria was to establish a professional, efficient and independent judiciary. The last few years had clearly shown that the best guarantee of democratic government was the separation of powers and the independence of the judiciary. His delegation supported the Sub-Commission's recommendation, contained in draft resolution VI, to create a monitoring mechanism to follow up the question of the independence and impartiality of the judiciary which would take the form of a special rapporteur (E/CN.4/1994/2).

52. With regard to the draft decision on recognition of gross and large-scale violations of human rights as an international crime, his delegation believed the study of that subject should be based on the important results achieved by the International Law Commission. As the Special Rapporteur stated in his working paper, gross and massive violations of human rights committed by organs or agents of a State could be regarded as an international crime. At the same time, those violations entailed the criminal responsibility of individual perpetrators. The International Law Commission had already dealt with that issue at length. Concerning the draft declaration on the subject, he said it was difficult, from the legal standpoint, to see how a document having the form of a declaration by the General Assembly could be qualified as an official list of international crimes.

53. His delegation was satisfied with the Sub-Commission's resolution on the situation in Bosnia and Herzegovina. The Sub-Commission had unequivocally condemned the ethnic cleansing and aggression occurring there and his delegation would like to see that firm language reflected in the Commission's resolution on that subject. Bulgaria also welcomed the quality of the report on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1993/34 and Add.1 to 4) and therefore supported the draft decision aimed at following up on the

report in a comprehensive programme for the prevention of discrimination and protection of minorities. He reserved the right to make in-depth comments on the report of the Special Rapporteur at a later stage. Lastly, his delegation agreed with the conclusion of the Special Rapporteur that, as part of its programme of advisory services and technical assistance, the Centre for Human Rights should expand its capacity to assist in the prevention of conflicts among groups. At the request of the Governments concerned, the Centre should therefore provide the services of experts on minority issues and on the prevention and settlement of disputes involving minorities.

54. Mr. FLINTERMAN (Netherlands) said that his Government had always supported the Sub-Commission, the only real expert body on human rights in the United Nations system. The Sub-Commission's work nevertheless called for some critical, though constructive, comments. Over the past few years, his delegation had expressed growing doubts about the Sub-Commission's methods of work and the proliferation of its activities. At the Commission's forty-ninth session, it had appeared that some steps had been taken by the Sub-Commission to reform its working methods. After reading the report on the work of the Sub-Commission at its forty-fifth session (E/CN.4/1994/2), however, a different picture had emerged. The Sub-Commission had not provided satisfactory responses on the rationalization of its agenda, its role in studying country-specific situations of human rights violations and the strengthening of the independence of its members. According to the report by the Sub-Commission's Chairman (E/CN.4/1994/70), there also seemed to be diverging views among members on how the Sub-Commission could best function. It was of great importance that the members of the Sub-Commission should show discipline in the number of subjects studied and resolutions and decisions adopted every year. In a joint statement made by non-governmental organizations and dated 25 August 1993, a large number of those organizations had voiced concern about the forty-fifth session of the Sub-Commission. His delegation was anxious to know from the Sub-Commission how it intended to meet those concerns.

55. Turning to more specific issues, he said that, over the past few years, the Working Group on Contemporary Forms of Slavery had not been able to make progress in the way expected of it. It might be that the Working Group's present mandate did not allow it to operate in an effective manner. Another explanation might be that its status did not give it the same authority vis-à-vis States as it would enjoy if it operated under the auspices of the Commission. It might even be asked whether the Sub-Commission itself was showing sufficient interest in the activities and functioning of its own Working Group. His delegation appreciated the efforts made to improve the situation. However, it wondered whether the Sub-Commission, when adopting the draft resolution providing for the establishment of a new working group at the level of the Commission, had looked into all the consequences of the proposal and paid sufficient attention to the observations made in the study of the Secretary-General on the ways and means by which an effective mechanism might be established for the implementation of the Conventions on Slavery. The Sub-Commission provided no information about the continuation of the existing Working Group's activities. His delegation believed that that situation could create a duplication of efforts and would be unacceptable in the light of the financial constraints and lack of staff in the Centre for Human Rights. It therefore proposed that a decision on the Sub-Commission's recommendation

should be postponed until the Commission's next session to allow the Sub-Commission to clarify its position on the establishment of an effective mechanism.

56. Referring to the issue of indigenous peoples, he said that his delegation welcomed the excellent work done by the relevant Working Group. That did not mean that it was fully satisfied, however. The draft declaration on the rights of indigenous peoples was still being considered at the Working Group level. It was especially important that all outstanding issues should be dealt with as rapidly as possible with the participation of those involved, namely, the representatives of indigenous peoples. To enable such representatives to participate in the work, more Governments must contribute to the Voluntary Fund created for that purpose.

57. His delegation called on the Sub-Commission to give priority to the issue of the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, on which the Special Rapporteur had submitted a study. The Netherlands hoped that the Sub-Commission would submit concrete proposals for further action to the Commission at its next session.

58. Mr. HASHIM (Bangladesh), speaking in exercise of the right of reply, said that a non-governmental organization had brought up the case of a woman writer against whom a death sentence had been pronounced by a religious group following the publication of one of her books. During a press conference, the same religious group had denied having pronounced such a fatwa. The non-governmental organization in question had stated that the writer had been in hiding for several months. That information was not correct: the writer was living in her apartment under the protection of the police. Bangladesh was grateful to the non-governmental organization concerned for having acknowledged that the Bangladesh authorities encouraged the education of girls and the employment of women.

The meeting rose at 6.05 p.m.